G. R. S. IX—3]

Previous references
Mel 165-2085 I, 3285 (1923 Mel

Later references

File No. 146-23
Serial Nos. 1 6 2

Preserve

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for Jewels

SUBJECT

Grant of permission to Mr Sundara Rau Iyengaru pleader, Chadramagalam to put up a Compound wall within 3ft from the drain

2 To, The Deputy Comm^r. Madura
Mod 9626/d 14 & 24
Directs that the order of Govt. Suspending the Resolution of the Municipal Council in the matter be withdrawn

14/3
27 do

6382

G. R. S. 11] 191

GENERAL AND REVENUE SECRETARIAT

(Mul)

NOTES

File No. 146 23

FILE HEADING

Execution of a compound wall by Mr. M. R. Sundaram Iyer, Pleader, Chetpet contrary to the building bye-laws

From

The Dy. Commr. Kadur Distt

No. A C 2022/23-24 Dated 26/27 May 24 Received 29 5 24

Diary No.	L 6382	Enclos. File of records Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards for orders certain correspondence between the Mgr and the Presdt. Municpl Council in the matter of the Council's resolution of the 21st March 24 on the subject of the grant of permission to Mr. Sundaram Iyer, Pleader, Chetpet to put up a compound wall within 3 feet from the drain

NOTES AND ORDERS

Subd with references for orders

MK 22/5/24

The conditions which existed for interference of govt in 24 do not exist at present - as the habitability of the byelaw has been lost on account of

NOTES—First Sheet.

G R. S 111.2]

General and Revenue Secretariat | Mil File No. 146 of 1923

Serial No.	
	The decision of the High Court & the provisions of Sec 26(2) Cannot be interfered now L and L Secy) 27/5/24
	The action seems necessary the correspondence may be recorded & a Memorandum put up 3/6/24
10136/2624	
	The previous note of the Hon'ble Minister may be carefully considered in view of the decision of the High Court. CMO 6/6/24 Hon'ble 3/6 4/6
	Mian putting a draft 4/6
	Subd. with a draft G.O. for approval 4/6/24 L L Secy) 6/6
	Govt 9626 dt 10/6/24 Draft Madan Bench writ Govt of dy 14/4/24 be withdrawn approved 10/6
21/6	

NOTE—Contra effect

3

85799

D.C.J.]

R. Dc 2022/28 24

Enc. file of records as per Phereit

From

B. Sreenivasa Iyengar, Esq., B A , B L ,
Deputy Commissioner,
Kadur District

OFFICE OF THE DEPUTY COMMISSIONER
KADUR DISTRICT

Dated Chikmagalur 16th MAY 1924 17

GENERAL & REVENUE SECRETARIAT
26352
19 MAY
HOME SELF GOVT BRANCH

18 MAY 1924

To

B Nagappa, Esq , Bar-at-law,
Secretary to the Government
of His Highness the Maharaja of Mysore
Local and Legislative Departments,
Bangalore

Sir,

Rel 146-23-1

With reference to Government Order No R 11979/M1 155-20-5 dated the 29th April 1921, directing that the Deputy Commissioner's order suspending execution of the resolution of the Municipal Council of Chikmagalur dated the 30th November 1920, purporting to grant permission to Mr Sundaram Iyer, a Pleader residing at Chikmagalur, to put up a compound wall within 3 feet from the drain, do continue in force permanently, I have the honour to forward for perusal of Government the marginally noted correspondence between this office and the President, Municipal Council, in the matter of the Council's resolution of the 31st March 1924 on the subject, and to state as follows:-

Vide Ferfist enclosed

2 Subsequent to the issue of the Government Order of 29th April 1921 the wall which had been partly raised by Mr Sundaram Iyer, was got removed by the Municipality but the matter did not end there. Both Mr Sundaram Iyer and the Municipal Council appear to have filed certain suits against each other in the Civil Court, in the matter of the ownership of the land itself on which the compound wall had been raised. Some time after, as per resolution of the Municipal Council, a Sub Committee consisting of four members was appointed by the Council to consider

consider the points at dispute and submit a report regarding the feasibility and advisibility of settling the matter amicably out of Court

3 The Sub Committee having found that the evidence relied on by both the parties was inconclusive on the point of the ownership of the two strips of land in dispute, and taking into consideration the facts that the Municipality had no use for these strips of land, and that their value considered apart from the building was very little, recommended to the Municipal Council to grant the said strips of land to Mr. Sundaram Iyer, and also suggested that the suits filed by both the parties should be withdrawn A copy of its recommendation is herein enclosed for reference

4. This recommendation and a representation from Mr Sundaram Iyer to effect a compromise in regard to the Civil suits pending with reference to the compound wall came up for consideration before the Municipal Council at its meeting held on the 31st March 1924. It was then resolved(vide copy of resolution appended) that the Civil suits be withdrawn by both the parties, on the condition that Mr.Sundaram Iyer should give an undertaking, by a duly registered document, that he would surrender three feet of ground from the drain, whenever it was required by the Municipal Council for a public purpose without claiming any compensation therefor Permission appears to have been accorded to the gentleman to put up a compound wall within the aforesaid three feet of ground from the drain The construction of the wall has been commenced by Mr Sundaram Iyer and it is almost complete

5 It will be noticed that this resolution involving the permission to build the compound wall within three feet of the drain is in contravention of the Government Order of the 29th April 1921 which recognised the validity of para 6 of the building Bye-laws of the Chikmagalur Municipality requiring an owner to leave a clear margin o three feet from the drain.

6. It is necessary to mention here that since the passing of that Government Order, the Honorable the Chief Court have in Criminal appeal reported(Vide copy of Head Note appended) on page 221 Vol. XXVII

XXVII Mysore Chief Court Reports held that a Bye-law framed by a Municipal Council requiring an owner to leave out a part of his groun adjoining a Municipal drain is ultra vires But it seems to me that because of this decision it cannot be held that the Government Order of April 1921 should ipso facto be set at nought by the Municipal Council without consideration It was I think incumbent on the Municipal Council to have placed the whole matter before Government and solicited a reconsideration of the order of 1921 in the light of the Chief Court's decision referred to already

7 As the matters now stand, the Council has permitted the construction of the compound wall in direct violation of the Government Order even though an express undertaking has been taken from the owner for its removal without compensation, whenever the land is required for a public purpose

8 The President of the Municipal Council was requested in this office letter No O C 2022/23-24 dated 21st April 1924 to inform me whether the Government Order was considered by the Municipal Council when it passed the resolution of the 31st March 1924 He has replied, in his letter No H C 196/23-24 dated the 22nd April 1924, that since the decision of the Chief Court was subsequent to the issue of the Government Order of 1921 it was believed that the said order ceased to have effect as it was based on a bye-law the validity of which was questioned and negatived by the Chief Court in the above decision

9 In view, however of the Chief Court decision, and of the express undertaking of Mr Sundaram Iyer, it was felt by me that it would be a precipitate act to suspend the resolution of the Municipal Council under section 174(1) of the Mysore Municipal Regulation, and this course was not resorted to There was no representation made to me by any member of the Council or by any rate-payer of Chikmagalur, protesting against the course adopted by the Municipal Council

10 Mr K Subba Rao, Treasury Assistant Commissioner and an Ex-Officio member of the Municipal Council, was one of the members

members of the Sub Committee referred to above I had a talk with him about this matter He tells me that the Sub Committee was appointed only to consider the question of the ownership of the land in question, and that the grant, or not, of permission to Mr Sundaram Iyer to construct a compound wall within three feet from the drain was not referred to them, nor were the Government order of the 29th April 1921 and the correspondence leading thereto placed before them The Sub Committee's recommendations are also silent as regards the construction of the compound wall

11 I have considered it desirable to submit the entire records as per perist enclosed to Government for such orders as they deem fit to pass in the matter

12 The locality was visited by the First Member of Council during his recent visit to Chikmagalur on the 23rd April 1924, and during such inspection, one of the Mahomedan residents of the town reported to the First member that the construction of the compound was against an order of Government

I have the honour to be,

Sir,

Your most obedient servant,

District Superintendent of Police
in charge of the District Treasury,
For Offg Deputy Commissioner,
Kadur District
(Absent from station)

D S R

7

Appellate Criminal

Before Chandrasekhara Aiyer and Plumer, JJ

Government of Mysore, Appellant

(Complainant) 1922 July 17

Vs

Rajagopalachar, Respondent, (Accused)

Municipal Regulation VII of 1906, section 48(1) clause (n) and (p)- POwer to make by-laws - Sanitation and Conservancy- Bye-law requiring an owner to leave out a part of his gwounds adjoining municipal drain- Ultra vires - Section 9 clause (2) Power of Municipal Council to pass orders

The Bangalore Municipality in granting permission to the respondent to construct a compound wall on his site imposed a condition that he should leave a margin of 1½ feet from the edge of the municipal drain to the foundation ofthe compound wall

Held that a condition requiring an owner to leave out a part of his grounds adjoining the Municipal drain has nothing to do with eitner clause (n) of section 48 of the Municipal Regulation relating to the Regulation of sanitation and conservancy, or clause (p) of that section relating to the regulation of the structure and dimensions of the plinths walls, foundations, roofs and chimneys of new buildings for the purpose of securing stability, and for purposes of health and that consequently the bye-law No. 6 framed by the Municipal Council under those provisions must be deemed to be ultra vires inasmuch as it is beyond the scope of the matters in regard to which bye-laws may be framed

Held further that such a direction which was intended to secure some additional space by the side of the Municipal drain and for the benefit of tne Municipality has mothing to do with" Level, drainage sanitation or ventilation ", and is therefore not covered by section 96, (2) of the Regulation

Held also that if private property is required for any public purpose by any Municipal Council it must be acquired in a legal manner and not in exercise of powers conferred for the limited purpose of securing the safety and sanitation of towns

1922 Fa — Queen- Empress V Veerammal (1) and Bai Fatma V Rander Municipality (2) followed Municipality of Thana V Fazal Karim (3), distinguished

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" C O P Y "

Deputy Commissioner,

Kadur District

C M K

G.R. S VI G 34]

SUBJECT

Diary No of letter replied to 6382

General and Revenue Secretariat

( )

, the 19

of issue 14th June 24

by M S N Rao

y this be

i Printed ?

ii treated as a standing order ?

iii published in the Gazette English Part ?

iv translated

v placed at the disposal of the press ?

vi published in the Gazette Kannada Part ?

Section Mel

File No 146 23

Serial No 2

Proceedings of the Government of His Highness the Maharaja of Mysore

Read—

Govt order No R 11979/Mel 155 20-5 dy 29th April 1921 directing that the Dy Comm's order suspending execution of the resolution of the Municipal Council of Chickmagalur dy 30th Nov 1920 regarding the grant of permission to Mr Sundaram Iyer a Pleader resident at Chickmagalur to put up a compound wall within 3 feet from the drain do continuing in force permanently

2 Letter No O C 2022/23 24 dy 16th/17th May 1924 from the Dy Comm Kadur dist forwarding for orders of Govt certain correspondence between his office and the President Municipal Council in the matter of the resolution

of the Council dy the 31st March
1926 on the subject referred to
in para 2 of the Govt order read
above have the honr to
the Secretary to Govt Public & Confidential
Dept with the aforesaid three fair & Standard
Order for form the Board

(Adm No 1 9626/a records)

Govt direct that the provisions
of the order of Govt referred to in the Hag N-
preamble be withdrawn in view
of the decision of the Chief
Court in the appeal No 60 of 1922
Court/ viz that a bye-law
framed by a Municipal
Council requiring an owner
to leave out a part of his
ground adjoining a Munici-
cipal drain is ultra vires

L+L Secy to Govt

To The Dy Comm. Kadur Desk
with the records

List of enclosures.

Copied by

Examined by

WD 1225—GPS—1,513,23—31-12-26